

FOREIGN CLAIMS SETTLEMENT COMMISSION  
OF THE UNITED STATES  
WASHINGTON, D.C. 20579

IN THE MATTER OF THE CLAIM OF

ZENITH SALES CORPORATION

Claim No. CU-1933

Decision No. CU

422

Under the International Claims Settlement  
Act of 1949, as amended

PROPOSED DECISION

This claim against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, was presented by ZENITH SALES CORPORATION in the amount of \$8,668.36 based upon the asserted loss of payment for merchandise shipped to Cuba.

Under Title V of the International Claims Settlement Act of 1949 [78 Stat. 1110 (1964), 22 U.S.C. §§1643-1643k (1964), as amended, 79 Stat. 988 (1965)], the Commission is given jurisdiction over claims of nationals of the United States against the Government of Cuba. Section 503(a) of the Act provides that the Commission shall receive and determine in accordance with applicable substantive law, including international law, the amount and validity of claims by nationals of the United States against the Government of Cuba arising since January 1, 1959 for

losses resulting from the nationalization, expropriation, intervention or other taking of, or special measures directed against, property including any rights or interests therein owned wholly or partially, directly or indirectly at the time by nationals of the United States.

Section 502(3) of the Act provides:

The term 'property' means any property, right or interest including any leasehold interest, and debts owed by the Government of Cuba or by enterprises which have been nationalized, expropriated, intervened, or taken by the Government of Cuba and debts which are a charge on property which has been nationalized, expropriated, intervened, or taken by the Government of Cuba.

Section 502(1) of the Act defines the term "national of the United States" as "(B) a corporation or other legal entity which is organized under the laws of the United States, or of any State, The District of Columbia, or the Commonwealth of Puerto Rico, if natural persons who are citizens of the United States own, directly or indirectly, 50 per centum or more of the outstanding capital stock or other beneficial interest of such corporation or entity."

An officer of the claimant corporation has certified that the claimant was organized in Illinois on December 14, 1959 as a wholly owned subsidiary of Zenith Radio Corporation and that it became an active corporation on January 2, 1960, at which date it was assigned certain accounts receivable, including export receivables, from Zenith Radio Corporation. The record contains a copy of invoice R48334 reflecting said assignment.

An officer of the Zenith Radio Corporation has certified that it was organized in Delaware on March 31, 1958 as a publicly owned corporation, with 18,797,615 outstanding shares held by 48,369 stockholders as of April, 1967. As of March 8, 1967, 1.56% of the Stockholders representing 1.12% of the outstanding shares were residents of foreign countries and assumed to be citizens of those countries. The Commission holds that claimant is a national of the United States within the meaning of Section 502(1)(B) of the Act.

The record contains copies of claimant's detailed statements reflecting the sales By Zenith Radio Corporation to Distribuidora Cubana De Productos Electricos, S.A. of goods on open account totalling \$4,832.96 from January 14, 1959 to May 14, 1959, to which was added a shortage on a May 6, 1959 remittance of \$426.96 less overage on an April 29, 1959 remittance of \$854.18 decreasing the total to \$4,405.74; goods on open account totalling \$1,866.78 from May 11, 1959 to July 29, 1959, to which was added a shortage on a June 4, 1959 remittance of \$353.05, increasing the total to \$2,219.83; and goods on open account totalling \$2,042.79 from August 6, 1959 to August 31, 1959.

Additionally, the record includes a copy of a letter of August 9, 1960 from The First National Bank of Chicago, to Zenith Radio Corporation, in which it is stated that the collection of \$4,405.74 was paid by the consignee (Distribuidora Cubana De Productos Electricos, S.A.) as of August 2, 1960 and that their correspondent was still awaiting a dollar reimbursement release from the Exchange Board, a Cuban Government Agency; and a copy of another letter dated October 14, 1960 from said Bank, to Zenith Radio Corporation, stating that the collections of \$2,219.83 and \$2,042.79 were paid by the same consignee as of October 8, 1960 and that their correspondent bank was awaiting similar authorization from the Exchange Board. Claimant states that neither it nor Zenith Radio Corporation has received the funds.

The Government of Cuba, on September 29, 1959, published its Law 568, concerning foreign exchange. Thereafter the Cuban Government effectively precluded transfers of funds, in this and similar cases, by numerous, unreasonable and costly demands upon the consignees, who were thus deterred from complying with the demands of the Cuban Government. The Commission holds that Cuban Law 568 and the Cuban Government's implementation thereof, with respect to the rights of the claimant herein, was not in reality a legitimate exercise of sovereign authority to regulate foreign exchange, but constituted an intervention by the Government of Cuba into the contractual rights of the claimant, which resulted in the taking of American-owned property within the meaning of Section 503(a) of the Act. (See The Claim of The Schwarzenbach Huber Company, FCSC Claim No. CU-0019.)

Accordingly, in the instant claim the Commission finds that claimant's property was lost as a result of intervention by the Government of Cuba and that, in the absence of evidence to the contrary, the loss occurred on August 3, 1960 as to \$4,405.74, and on October 9, 1960 as to \$4,262.62, the days after the collections were acknowledged by the Trust Company of Cuba.

The Commission has decided that in payment of losses on claims determined pursuant to Title V of the International Claims Settlement Act of 1949, as amended, interest should be allowed at the rate of 6% per annum from the date of loss to the date of settlement (See the Claim of Lisle Corporation, FCSC Claim No. CU-0644).

Accordingly, the Commission concludes that the amount of the loss sustained by claimant shall be increased by interest thereon at the rate of 6% per annum from the dates on which the loss occurred, to the date on which provisions are made for the settlement thereof.

CERTIFICATION OF LOSS

The Commission certifies that ZENITH SALES CORPORATION suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Eight Thousand Six Hundred Sixty-Eight Dollars and Thirty-Six Cents (\$8,668.36) with interest thereon at 6% per annum from the respective dates of loss to the date of settlement.

Dated at Washington, D.C.,  
and entered as the Proposed  
Decision of the Commission

OCT 4 1967

  
Edward D. Re, Chairman

  
Theodore Jaffe, Commissioner

  
LaVern R. Dilweg, Commissioner

NOTICE: Pursuant to the Regulations of the Commission, if no objections are filed within 15 days after service or receipt of notice of this Proposed Decision, the decision will be entered as the Final Decision of the Commission upon the expiration of 30 days after such service or receipt of notice, unless the Commission otherwise orders. (FCSC Reg., 45 C.F.R. 531.5(e) and (g) as amended, 32 Fed. Reg. 412-13 (1967).)

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